Texas Conservative Coalition Research Institute

Comments to the House Committee on Public Health
Response to Request for Information
October 16, 2020

Provided via email to PublicHealth@house.texas.gov.

Regarding the following portions of Charge 2: *Review how Texas is preparing for state and federal budgetary changes that impact the state's health programs, including:*

- *the next phase of the 1115 Healthcare Transformation and Quality Improvement Program Waiver; and*

- *The Healthy Texas Women Section 1115 Demonstration Waiver.*

1115 Healthcare Transformation and Quality Improvement Program Waiver

History of Texas' 1115 Healthcare Transformation and Quality Improvement Waiver

The Medicaid program allows for supplemental federal funding to be provided to certain providers outside of traditional claim-based reimbursements. These funds are not represented in the Texas budget because no General Revenue (GR) is involved. Under this scenario, local governments provide the non-federal share of matching money through Intergovernmental Transfers, or IGTs. The Health and Human Services Commission (HHSC) is then responsible for drawing down the federal match and distributing those funds to eligible providers.

The purpose of these supplemental programs is primarily to assist hospitals and other safety net providers (i.e. physician and other provider groups, mental health authorities, local health departments) that provide care to a disproportionately high number of indigent uninsured patients and to address the Medicaid shortfall- generally defined as the difference between what a service costs and what Medicaid reimburses for that service.

The 82nd Legislature directed HHSC to expand Medicaid managed care statewide to achieve savings and to preserve access to supplemental Upper Payment Limit (UPL) funding,[1] which traditionally paid the difference

between what Medicaid pays and what Medicare would have reimbursed for the same service.[2] Federal regulations historically did not allow a supplemental UPL payment for a claim paid under a capitated (i.e. managed care) arrangement.[3] In order to expand Medicaid managed care and preserve hospital funding, HHSC sought an 1115 demonstration waiver from the Centers for Medicare and Medicaid services (CMS).

In December 2011, Texas received federal approval for an 1115 Healthcare Transformation and Quality Improvement Waiver that would preserve the former UPL funding under a new methodology, allow for managed care expansion, and fund regional projects to improve the quality of, and access to, healthcare in Texas. The waiver was initially approved for a 5-year period of 2011-2016, drawing down an estimated $29 billion during this initial period.[4] Since then there have been multiple extensions and one major renewal, but Texas now faces the ends of a major funding source in September 2021 and renewal of the waiver once again in September 2022.

Current Waiver Status

Under the waiver, traditional supplemental and "new" funds are distributed to hospitals and other providers through two primary funding pools (this is not inclusive of other supplemental payments outside of the waiver):

- Uncompensated Care (UC) Pool – helps offset costs related to uncompensated care for hospitals, physician groups, and other eligible providers.
- Delivery System Reform Incentive Payment (DSRIP) Pool- a new program created under this waiver to support coordinated care and quality improvements via regional programs throughout the state.

Unlike traditional Medicaid payments that are reimbursed based on the service provided, DSRIP payments are earned by meeting project-specific metrics each year. The primary purpose of DSRIP projects is to serve both Medicaid and low-income uninsured individuals with the goal of transforming delivery systems to improve care; improve population health; and/or lower costs through efficiencies and improvements.

At its height, the DSRIP pool was funding about 300 providers operating more than 1,400 DSRIP programs throughout the state.[5] While projects could vary in size and scope depending on the needs of local communities, some key areas were the focus of multiple projects. These major areas included behavioral health; access to primary care; chronic care management/ assistance navigating the health care system; access to specialty care; and health promotion/ disease prevention. During the waiver's first renewal period CMS and HHSC began working to strengthen reporting around DSRIP projects, better measure program development and outcomes, and increase data exchange among projects.

The DSRIP pool was originally established as a temporary measure to fund transformation projects with the expectation that these programs would eventually achieve self-sufficiency. In September 2021, DSRIP will expire having provided an estimated $25 billion in supplemental federal funding since its inception.[6] Some (or many) entities that operate these programs will undoubtedly be seeking to compensate for this loss of funds and lawmakers should be aware they will likely seek assistance from the state to keep initiatives going if they do not have the resources to do so themselves. While the waiver renewal in September 2022 is looming large on the

horizon, the expiration of the DSRIP pool will be the most immediate issue facing safety net providers and lawmakers in the upcoming session.

Conclusion and Policy Recommendations

The current waiver does allow for expanded access to care and services to both Medicaid and the low-income uninsured population. It does so without enrolling the uninsured in an entitlement program and ties some outcome measures to funding so providers are not paid solely on volume. For these reasons, the waiver is far superior to expanding the open-ended Medicaid program. As the state moves forward, Texas should continue to seek renewal of the 1115 waiver with an emphasis on funding that relies on objective, measurable outcomes, building on what the state has achieved over the past nine years. TCCRI recommends that lawmakers focus on the following three areas:

- Clearly Define Priorities for Any New Directed Payment Models : Over the past several years, CMS has increasingly encouraged states to send directed payments via the Medicaid managed care system based on quality metrics.[7] HHSC clearly reiterated this point in its August 2020 DSRIP Transition Plan noting "CMS has indicated to HHSC that directed payment programs are a potential model for Texas to consider as it transitions the DSRIP program," indicating that there will likely be an effort to continue funding some DSRIP-like projects through this mechanism. State leaders must ensure that any new or continued projects have clearly defined goals and measurable outcomes that can demonstrate true health and/or system improvements and are not simply a "number of patients served" brute force performance target. Lawmakers should also consider focusing on projects that support more streamlined state goals rather than a model that again results in more than 1,400 projects throughout the state that would most likely prove unwieldy to manage and measure for any true improvements.

- Ensure Any New Projects Focus on Medicaid Enrollees and the Indigent: Of the Texans served by DSRIP projects, about 25% are on Medicaid and 40% are low-income/ uninsured. The remaining 35% are classified in an HHSC presentation as "other," leading to the likely conclusion that these are insured and/or non-indigent patients. It is crucial that state leaders keep in mind that this waiver has paid out billions of dollars that are not patient specific. These large blocks of funding reduce accountability and, because they do not appear in the state budget, also lack true transparency. While these dollars are dedicated to the care of Medicaid and low-income uninsured patients, when DSRIP dollars are used to establish a heart catheter lab for example, that new infrastructure will also be used for commercial and private pay patients, allowing supplemental Medicaid dollars to be used to subsidize care to all patients in some cases. It is critical to point out that federal money is not free and that Texas taxpayers are a significant contributor to the federal budget. Going forward, Texas should ensure that waiver projects focus on preserving finite resources for those most in need.

- Equip Lawmakers with More Detailed Information on Various Funding Pools: As has been alluded to in these comments, billions of dollars flow to various safety net providers and are not accounted for anywhere in the state budget. This can result in lawmakers and budget writers making decisions in a vacuum without being presented with a thorough picture of all of the state *and* federal funds being paid out. For instance, in addition to the UC

and DSRIP pools under the waiver, there are various other "off-budget" funding sources, including Graduate Medical Education (GME); Disproportionate Share Hospital (DSH); Uniform Hospital Rate Increase Program (UHRIP); Quality Improvement Payment Program (QIPP); and Network Access Improvement Program (NAIP). TCCRI recommends that lawmakers add an informational rider to the state budget, similar to the current Medicaid Informational Rider (Art. II, Spec. Prov., Sec. 7) that, at the very least, lists each supplemental funding pool or source and its total amount. The various funding pools available to each provider type, especially those that do not appear in the state budget, can be very difficult to locate and almost impossible to total. Such a rider would provide crucial information to budget writers and lawmakers by providing them with a more thorough picture of the current fiscal landscape as they make critical budgetary decisions. This information will be even more important with the addition of billions of dollars in federal COVID-related funding.

Healthy Texas Women Section 1115 Demonstration Waiver

The Healthy Texas Women (HTW) Program was originally part of the Texas Medicaid program, providing family planning services for eligible women of childbearing age. Under what was then known as the Medicaid Women's Health Program, Texas prohibited abortion providers from participating in the program. However, when new regulations were enacted to also prohibit the participation of abortion provider affiliates in accordance with state law[8] in early 2012, the federal government prohibited Texas from drawing down any federal funds to support the program.[9]

To ensure that low-income women could continue to access these services, then- Governor Rick Perry directed HHSC to stand up a fully state-funded program to provide family planning and other basic health services without the use of abortion providers or their affiliates.[10] The program has continued to flourish under the leadership and commitment of Governor Abbott and the Texas Legislature. Today, the HTW Program serves about 335,000 women up to 200% of the federal poverty limit (FPL)[11] and provides family planning services; breast and cervical cancer screenings; screening and treatment for blood pressure, high cholesterol, and diabetes; and screening and treatment for postpartum depression.[12]

Earlier this year Texas received approval from the federal government to implement an 1115 women's health demonstration waiver that will essentially carve this program back into Medicaid and allow for about $350 million in federal funding to provide these services.[13]

As HHSC explains in its announcement of the waiver:[14]

> The waiver upholds Texas' policy that favors childbirth and family planning services that do not include elective abortions or the promotion of elective abortions within the continuum of care or services and avoids the direct or indirect use of state funds to promote or support elective abortions.

This waiver approval is undoubtedly welcome news. It does not represent the expansion of a government program, nor does it further beholden taxpayers to additional entitlement programs. This will simply allow the state to once again draw down federal funds that should never have been discontinued. However, as the state

moves to implement this demonstration program, lawmakers should ensure that Human Resources Code §32.024(c-1), which prohibits the inclusion of abortion providers and affiliates in this program, remains intact. The state must also stand ready to re-establish an independent state program should federal guidance around the inclusion of abortion providers and affiliates change at any point in the future. Texas has already proven that a commitment to women's health and upholding the sanctity of life should not work at cross-purposes and no amount of federal money is worth such a compromise.

ENDNOTES

[1] See SB 7, 82nd Legislature, 1st Called Special Session, 2011.
[2] See Medicaid and CHIP Payment Access Committee website. "Provider Payments." Available at: https://www.macpac.gov/subtopic/supplemental-payments/.
[3] Medicaid and CHIP Payment and Access Committee. "Medicaid UPL Supplemental Payments." November 2012. Available at: https://www.macpac.gov/wp-content/uploads/2015/01/MACFacts-UPL-Payments_2012-11.pdf.
[4] HHSC. "Texas STC 48 Transition Plan." March 23, 2015. Available at: https://hhs.texas.gov/sites/default/files/documents/laws-regulations/policies-rules/1115-docs/050815/STC-48-Transition-Plan-20150323.pdf.
[5] HHSC. "Delivery System Reform Incentive Payment (DSRIP) Transition Plan." August 27, 2020. Available at: https://hhs.texas.gov/sites/default/files/documents/laws-regulations/policies-rules/Waivers/medicaid-1115-waiver/dsrip-transition-plan.pdf.
[6] HHSC. "Medicaid Supplemental and Directed Payment Programs and 1115 Waiver Update." Presentation to the House Committee on Human Services. November 12, 2019. Available at: https://hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2019/leg-presentations/house-human-services-nov-12-2019.pdf.
[7] CMS Informational Bulletin. "Delivery System and Provider Payment Initiatives Under Medicaid Managed Care Contracts." November 2, 2017. Available at: https://www.medicaid.gov/sites/default/files/federal-policy-guidance/downloads/cib11022017.pdf.
[8] See Texas Human Resources Code §32.024(c-1).
[9] Miller, Debra. "Obama Administration Cuts off Medicaid Funding to Texas for Women's Health." *Council of State Governments website.* March 16, 2012. Available at: https://knowledgecenter.csg.org/kc/content/obama-administration-cuts-medicaid-funding-texas-women%E2%80%99s-health.
[10] Ramshaw, Emily and Root, Jay. "Perry: Texas Will Fund Women's Health Program." *Texas Tribune*. March 8, 2012. Available at: https://www.texastribune.org/2012/03/08/perry-blasts-feds-over-abortion-redistricting/.
See also KCBD News. "Gov. Perry: Texas stands ready to implement state Women's Health Program." October 31, 2012. Available at: https://www.kcbd.com/story/19964379/gov-perry-texas-stands-ready-to-implement-state-womens-health-program/.
[11] See HHSC website. Data & Statistics. "Healthy Texas Women Enrollment (September 2014- June 2020). Available at: https://hhs.texas.gov/about-hhs/records-statistics/data-statistics/healthcare-statistics.
[12] See Healthy Texas Women website, "HTW: Benefits." Available at: https://www.healthytexaswomen.org/healthcare-programs/healthy-texas-women/htw-benefits.
[13] Texas HHSC Press Release. "Texas Secures Approximately $350 Million in Federal Funding for Women's Health Services." January 24, 2020. Available at: https://hhs.texas.gov/about-hhs/communications-events/news/2020/01/texas-secures-approximately-350-million-federal-funding-womens-health-services.
[14] *Ibid.*